

Q-2

IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF UTAH, in
AND FOR UTAH COUNTY.

.....

PROVO RESERVOIR COMPANY,
a corporation,

Plaintiff,

vs.

ANSWER AND COUNTER-CLAIM OF
STEWART RANCH.

PROVO CITY, et al., and
STEWART RANCH, a corporation,

Defendants.

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Comes now the Stewart Ranch, a corporation, and files
this its answer and counter-claim to plaintiff's complaint
on file herein and admits, denies and alleges as follows:

1. This defendant admits the allegations in paragraphs
one, two, three, four, five, six, seven, eight, nine, ten,
eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen,
eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-five,
twenty-six and thirty-four;

2. Answering paragraph twenty-four of plaintiff's
complaint, this defendant admits that it claims a right to and
an interest in the waters of Provo River, but defendant denies
that it has any knowledge or information thereof sufficient to
form a belief as to whether or not each of the defendants have
and claim an interest and a right to the use of the waters of
Provo River and on that ground denies the same.

This defendant admits each and every other allegation
in said paragraph twenty-four contained.

3. Answering paragraphs twenty-three, twenty-seven,
twenty-eight, twenty-nine, twenty-nine A, Twenty-nine B, thirty-
nine C, twenty-nine D, thirty, thirty-one, thirty-two, twenty-
three and thirty-six, this defendant denies that he has any
knowledge or information thereof sufficient to form a belief as
to the truth or falsity of said allegations in said paragraphs
contained and therefore denies the same.

4. Answering paragraph thirty-seven of plaintiff's complaint, this defendant admits that on or about the 6th day of May, A. D., 1899, there was entered a decree of the Fourth Judicial District Court in and for Wasatch County in the case of Wasatch Irrigation Company, et al., vs. Edward Eulton, et al., and that on or about the 7th day of September, 1905, the Fourth Judicial District Court in and for Utah County, State of Utah, entered a decree in the case of Provo City, vs. McEluride Power Transmission Company, et al., but as to the exact contents of said decree and the purport and meaning thereof, this defendant is not fully advised.

This defendant admits that at the time of the making of said decrees, all of the waters of Provo River had not been and were not appropriated and that since the making of said decrees large areas of land have been brought under cultivation, and that many persons not parties to either of said decrees were, at the time of the making of said decrees and have since the making of said decrees, appropriated and acquired an interest in the waters of Provo River and are now the owners of and have a right to use the waters of said river for culinary and domestic purposes.

This defendant denies that he has any knowledge or information thereof sufficient to form a belief as to the truth or falsity of the remaining allegations in said paragraph thirty-seven contained and therefore denies the same.

5. Answering paragraphs twenty-nine B and thirty-five, this defendant denies each and every allegation in said paragraphs twenty-nine B and thirty-five contained.

6. Answering paragraphs thirty-eight and thirty-nine, this defendant admits that the present regulations and provisions for the distribution of the waters of said river are inadequate and that proper and efficient measuring devices and diversion dams should be provided for, and that a competent water commissioner should be appointed by the court to distribute the

waters of said river to those entitled thereto, but this defendant denies that he has any knowledge or information thereof remaining allegations in said paragraphs contained and therefore denies the same.

7. This defendant denies generally and specifically each and every allegation in said complaint contained not hereinbefore specifically admitted or otherwise denied.

As a further defense and by way of counter-claim, this defendant alleges:

1. That the defendant, Stewart Ranch, is a corporation organized and existing under and by virtue of the laws of the State of Utah.

2. That all of the lands hereinafter described, as belonging to this defendant have been and are arid, barren and sterile in character and not productive without irrigation, but with the use of artificial irrigation will produce productive agricultural crops;

3. That the defendant is the owner of approximately nineteen hundred acres of land situated in Sections Two (2), Ten (10), Eleven (11), Fourteen (14), Fifteen (15), Sixteen (16), and Twenty-four (24), Township Two (2) South, Range Seven (7) East, Salt Lake Meridian, and located in Wasatch and Summit Counties;

4. That the several predecessors in interest of this defendant, and this defendant, for the purpose of irrigating the said lands now owned by this defendant, and for domestic, culinary, stock purposes and other purposes, appropriated waters from the then unappropriated waters of Provo River, by means of diversion dams, ditches and otherwise, and have applied and used the same continuously from the time of said appropriations hereinafter set forth and upon the lands of the defendant. The dates and amounts of said appropriations are as follows, to-wit:

<u>Date of Appropriation.</u>	<u>Second Feet.</u>
On or about 1872	3
1885	3
1889	3½

1895	1 $\frac{1}{2}$
1902	30
1903	15

5. That the said waters so appropriated, as aforesaid, from the said Provo River, and its tributaries, were, from the date of said appropriations, necessary, and ever since have been and now are necessary and ~~are~~ ^{are} actually used in the irrigation and for culinary and domestic purposes of defendant's lands/ and have been used economically and for beneficial purposes and have been used openly, notoriously, continuously and uninterruptedly and under claim of right and adverse to all the parties to this action and against all the world and during each and every irrigation season, since the dates of said appropriations, as aforesaid, except that during the low water season when all flood waters have ceased, a portion of the waters appropriated after the year 1900, as aforesaid, have not been diverted by this defendant during the entire period of each and every year, the period of the year at which said full diversion ceased depending upon the flow of the said Provo River, during each particular year.

6. This defendant alleges that it is the owner of all of said water rights and the right to use the said waters of Provo River and its tributaries so appropriated, as aforesaid.

WHEREFORE this defendant prays that it be awarded the right to the use of the quantities of water so appropriated, as aforesaid, and that its title thereto be quieted and that the plaintiff and all other defendants herein be enjoined from asserting or claiming any right to said waters adverse to this defendant, or in any manner interfering with the defendants' use of the same.

This defendant prays for general relief.

Stewart, Stewart & Alexander
Attorneys for Defendant.

STATE OF UTAH)
) SS
COUNTY OF SALT LAKE)

S. W. Stewart, being first duly sworn, deposes and says: That he is an officer of the Stewart Ranch, a corporation,

to-wit: ~~Vice~~-President thereof; that he has heard read the foregoing answer and counter-claim and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated upon information and belief and as to those matters he believes it to be true; that he makes this verification for and on behalf of said corporation.

S. W. Stewart

Subscribed and sworn to before me this 24 day of March, 1915.

Barnard J. Stewart
Notary Public.

